IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. ARBITRATION APPLICATION NO.102/06

Jain Construction Co.

Versus

U.O.I. & Anr.

DATE OF ORDER :: 16/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. D.D. Sharma, for applicant

Mr. P.C. Sharma, for respondents

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Instant application has been filed u/s.11 of Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

There is no dispute between the parties that agreement was executed which contains appointment of Arbitrator for resolving dispute and the disputed claim, of which reference has been made in Para 7.8 of application, arises from the terms of agreement itself.

Objection raised by counsel for respondents is that once the applicant has signed the final bills and certificate of no claim has also been signed in terms of Clause 43 of General Conditions of contract, of which reference has been made in Para 13 of reply, the dispute does not call for to be arbitrated while invoking Clause 64 of General Conditions of contract. It is also not in dispute that notice was served,

but respondents have failed to invoke Clause 64 in appointing Arbitrator in terms of agreement. As such, this court has to make appointment of Arbitrator u/s.11 of the Act, 1996.

In **Union of India Vs. L.K. Ahuja & Co. [(1988) 3 SCC-76]** the contractor accepted the four final bills and gave no claim declaration in respect of the four contracts and thereafter, wrote a letter to the Chief Engineer stating about amount which was due on account of work executed and requested him to refer the dispute to the Arbitrator. In the light of objection raised by counsel for respondents with respect to no claim declaration made, the apex court observed as under:

> "It is true that on completion of the work, right to get payment would normally arise and it is also true that on settlement of the final bill, the right to get further payment gets weakened but the claim subsists and whether it does subsist, is a matter which is arbitrable."

The Apex Court in **Jayesh Engineering Works Vs. New India Assurance Co. Ltd. [(2000) 10 SCC-178]** further observed:

> "Whether any amount is due to be paid and how far the claim made by the appellant is tenable are matters to be considered by the arbitrator. In fact, whether the contract has been fully worked out and whether the payments have actually been

> made in full and final settlement are questions to be considered by the arbitrator when there is a dispute regarding the same."

From the above principle, it is clear that the question as to whether the applicant is entitled to claim enhanced amount subsequent to signing of final bill is arbitral dispute and it is for the Arbitrator to decide the same.

In view of what has been observed, present application stands allowed and this court considers it proper to appoint Hon'ble Mr. Justice F.C. Bansal [Retd.], D-68, Laxman Path, Hanuman Nagar, Opp. Vaishali Nagar, Telephone Exchange, Jaipur as sole Arbitrator to whom the dispute shall be referred. The cost of arbitration and fees of Arbitrator shall be as determined by the Arbitrator.

Copy of this order be sent to Hon'ble Mr. Justice F.C. Bansal [Retd.], D-68, Laxman Path, Hanuman Nagar, Opp. Vaishali Nagar, Telephone Exchange, Jaipur, Arbitrator forthwith and parties are directed to appear before him on 17th December, 2007 at 4.30 PM or any other date if informed by him.

[AJAY RASTOGI],J.